

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 174 of 1988****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH****HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?No

2 To be referred to the Reporter or not ?No

3 Whether their Lordships wish to see the fair copy
of the judgment ?No

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?No

5 Whether it is to be circulated to the civil judge
?No

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GUJ STATE ROAD TRANSPORT CORPN - Appellant(s)**Versus****KAILASHBEN WD/O CHANDULAL SHANTILAL RANA & 5 -
Defendant(s)**

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Appearance :

MR MD PANDYA for Appellant(s) : 1,
MR HM PARIKH for Defendant(s) : 1 - 5.
NOTICE SERVED for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**and****HONOURABLE MR.JUSTICE K.M.MEHTA****Date : 17/07/2006****ORAL JUDGMENT**

(Per : HONOURABLE MR. JUSTICE K.M.MEHTA)

The Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation"), appellant, have filed this First Appeal under Section 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") against the judgment and award dated 07th July, 1987, passed by the Motor Accident Claims Tribunal (Auxi.), Kheda at Nadiad, in M.A.C.P. No.534 of 1983, filed by Kailashben, widow of Chandulal Shantilal Rana. The Tribunal by its impugned judgment and award directed the claimants to recover Rs.2,57,000/- with 9% interest along with proportionate costs from the opponents. Out of the said amount, Rs.15,000/- awarded as interim compensation was paid to be deducted and 80% of the awarded amount to be deposited in the Bank for a period of five years.

2. The facts giving rise to this appeal are as under:-

2.1 Kailashben, widow of Chandulal Shantilal Rana on her behalf and as guardian of minors Kalpesh and

Tejalben, in company of Shantilal Mohanlal and Shantaben Shantilal lodged the claim petition against the Corporation and the driver of the bus for recovering compensation of Rs.2,65,000/-, inter-alia contending therein that, on 14.7.1983 at about 10.00 a.m. the husband of the claimant No.1 i.e. Chandulal Shantilal Rana, who had to attend his business had started for Anand and boarded the bus from S.T.Stand on Borsad going to Nadiad. The bus of the Corporation bearing No.GRT - 7632 was being driven by Manevarkhan Husen Khan Pathan - opponent No.1. It was contended that opponent No.1 was driving the bus at an imprudent speed and in a rash and negligent way. It was contended that, while deflecting the bus near the curveture of Jitodiya, the bus broke open the culvert parapet wall and entered the pond as a result of which the pond being full of water, the husband of claimant No.1 died.

2.2 In view of the aforesaid circumstances, the Claim Petition was filed to recover compensation of the said amount. It was stated that the deceased was able bodied person aged 27 years and was trading in

corn and grocery having his shop at Block No.34 in Gandhi Ganj Borsad. He was earning Rs.15,000/- per year, and therefore Rs.2,40,000/- have been claimed for monetary loss on the basis of Rs.12,000/- being contributed to the family by the deceased for a period of 20 years, and Rs.15,000/- claimed for mental suffering and loss of consortium to widow and children and Rs.10,000/- for obsequial and funeral ceremony and transport charges.

2.3 Before the Tribunal, the S.T.Corporation filed written statement at Exh.12 and denied the contention of the claimants. They denied the proof of age and cause of death also in this behalf. It was stated that the claimant is put to the proof of rash and negligent driving of the bus that the opponent No.1 was driving the bus at the average speed on left hand side. It was stated that when the bus came near scene of occurrence another bus was coming from opposite side, and while giving side to that bus, the opponent No.1 deflected his bus more towards left taking the bus on kutcha road and the soil of kutcha road under-neath the bus, gave way as a result of

which the bus got tilted and fell in the pond. It was also contended that the accident occurred because of improper maintenance of the road for which the Corporation is not responsible and therefore denied liability to pay the compensation. Thus the learned Judge by his impugned judgment and award held that the claimants proved that the deceased died due to rash and negligent driving of the opponent No.1 - driver of the bus.

2.4 As regards compensation, after going through the evidence on record, the learned Judge held that the deceased would have earned Rs.12,000/- to be the contribution that the deceased could be expected to give to his family. The learned Judge held that, as the deceased was 27 years old, he has applied the multiplier of 20. So $\text{Rs.12,000} \times 20$ works out to Rs.2,40,000/-, and thereafter the learned Judge has added compensation Rs.10,000/- for loss of expectation of life, Rs.2,000/- for funeral and obsequial ceremony and Rs.5,000/- for loss of consortium. So in all, the learned Judge awarded total compensation Rs.2,57,000/-. Out of that the

learned Judge has deducted Rs.15,000/- which was already awarded earlier.

2.5 The Tribunal passed the award against the driver of S.T. bus involved in the accident and therefore also against the appellant Corporation. Since the deceased was travelling as a passenger in the bus and the finding given by the Tribunal that the bus was being rashly and negligently driven by the bus driver on 14.7.1983 is not capable of being challenged in the facts and circumstances of the case, no discussion is required to be made on that score. The only defence taken by the driver was that the road was kutcha road, but that explanation is not justified to come to the conclusion that the driver was not negligent in this behalf.

3. As regards quantum of compensation, Mr.M.D.Pandya, learned Senior Counsel for the Corporation has made following submissions:

3.1 The learned Counsel for the Corporation has submitted that the learned Judge has not properly

appreciated the oral as well as documentary evidence on record, and the compensation awarded by the tribunal is excessive, and thus, this Court may interfere with the award of the Tribunal. It was submitted that when the deceased was carrying on business and the deceased had some portion of the business and when he died, then in such circumstances the Court has to evaluate as to what part of the business is referable to the ability, efforts and labour of a person running the business.

3.2 The learned Counsel further submitted that the deceased had 75% share in the business and 25% being that of the father of the deceased, and so even after death of the deceased, the family business may continue and may receive their share in the earning. The learned advocate further submitted that, in any case, adopting a multiplier of 20 is excessive and submitted that for a man of 27 years of age, multiplier of more than 15 could not have been adopted.

4. We have also gone through the documentary

evidence particularly Exh.85 where assessment order under Income Tax Act of deceased Chandulal Rana was produced. As per Income Tax Officer the total income of the deceased was assessed Rs.22,680/- for the Assessment Year 1978-79. For the Assessment Year 1979-80 the Income Tax Officer assessed the income of the deceased at Rs.23,345/- which is produced at Exh.85. Further assessment order of Income Tax Officer at Exh.86 where return of income filed on 19th July, 1982, declaring income of the deceased at Rs.25,580/- was assessed by the Income Tax Officer and another Exh.87 where also the return of Income-Tax was filed on 6th July, 1983, declaring total income of the deceased at Rs.24,430/-. They had also produced a challan of Professional Tax also and the copy of the Partnership Deed showing that the deceased had 75% share of business. The said partnership deed was executed on 5.3.1976 which is produced at Exh.90.

5. As far as income is concerned, the learned Judge has referred to the evidence of Kailashben and stated that deceased was aged 27 years at the time of

his death. Thereafter the learned Judge has observed that the deceased had 75% share in the shop and annual income of the deceased was given by Kailashben as Rs.15,000/- per year. Thus the learned Judge has stated that the family members are four in the number and the contribution that the deceased could be expected to give to his family as proposed by learned advocate should be Rs.12,000/- per year to be the contribution which the deceased could be expected to give to his family. As the deceased was 27 years on the date of incident, the learned Judge applied 20 multiplier.

7. We have also gone through the original evidence on record and from the evidence on record it appears that the claimants have produced income-tax assessment orders which are at Exhs.84, 85, 86 & 87. In view of this figures arrived at by the learned Judge that the deceased was earning Rs.15,000/- per year is not wholly borne out from the record of the case. After taking into consideration of the income wherein income-tax assessment orders have been produced which we have referred for four years then

for the year 1978-79 the income was Rs.22,000/-, for the year 1979-80 the income was Rs.23,000/-, for the year 1982 the income was Rs.25,580/- and for the year 1983 the Income Tax Officer has assessed the income at Rs.24,430/-. As the incident has happened in July 1983, if we take income of Rs.22,680.00 + Rs.23,345.00 + Rs.25,580.00 + Rs.24,430.00 then total amount works out to Rs.96,035/-, and if we take the average of 4, then average income of the deceased in the year works out to Rs.24,000/-. If that is taken then also even the figure of Rs.15,000/- arrived at by the learned Judge is much on lower side. Thus we take the income of deceased as Rs.24,000/-, out of the total income, we have to presume that the deceased will spent $\frac{1}{3}$ rd of the income for himself. So out of total Rs.24,000/-, after deducting $\frac{1}{3}$ rd amount, then the amount will come to Rs.16,000/-. So the deceased will be able to give Rs.16,000/- per year to his family.

8. It is no doubt true that the learned Judge has taken 20 multiplier, but if we take the age of the deceased at 27 years then as per the Schedule even

multiplier of 18 will be applicable. It is no doubt true that the learned Judge has incorrectly applied the multiplier, however, as indicated earlier, the average income of the deceased could be worked out at Rs.16,000/- whereas the learned Judge has arrived at Rs.12,000/-. In view of this, as the deceased was 27 years old, as per Schedule, if we take multiplier as 18 then it comes to about $(Rs.16,000 \times 18) = Rs.2,88,000/-$. If that is to be considered then the overall figure which the learned Judge awarded at Rs.2,40,000/- is legal and valid. It may be noted that while taking this we have not taken into consideration the future income of the deceased also and we have taken into consideration the income which had been disclosed by the deceased before his death. In view of the peculiar facts and circumstances of the case, we do not intend to disturb the finding of the learned Judge regarding multiplier, because, according to us, the compensation arrived at by the learned Judge is within the brackets.

9. As regards other amounts of compensation, namely Rs.10,000/- for expectation of life,

Rs.2,000/- for funeral and obsequial ceremony and Rs.5,000/- for loss of consortium which have been awarded by the learned Judge, they are quite legal and valid, and according to us, the learned Judge has properly arrived at the income of the deceased and overall quantum of compensation awarded by the Tribunal is perfectly justified and right and therefore we do not find any serious infirmity in the impugned award of the Tribunal. There is no error committed by the learned Judge in arriving at the finding on the income part as well as on negligence part and therefore we do not intend to interfere with the award of the Tribunal.

10. In view of the above discussion, we do not find any merit in the appeal. The appeal is, therefore, dismissed. The award of the Tribunal is confirmed. If any amount was deposited and invested pursuant to the orders of this Court, now same may be paid to the respondents/claimants after verifying the identity of the claimants in this behalf.

(M.S. SHAH, J.)

(K.M. MEHTA, J.)

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